
JODY HELGELAND
JESSIE TANNER

VIRGINIA WOLF
CAROL SCHUMACHER

Case No. 05-CV-1265

DIANE SCHERMANN
MICHELLE COLLINS

MEGAN SAPNAR
INGRID ANKERSON

ELOISE McPIKE
JANICE BARNETT

JAYNE DUNNUM
ROBIN TIMM,

Plaintiffs,

v.

DEPARTMENT OF EMPLOYEE
TRUST FUNDS, EMPLOYEE TRUST
FUNDS BOARD,
ERIC STANCHFIELD, Secretary of the
Department of Employee Trust Funds,
GROUP INSURANCE BOARD,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT

Defendants, by their attorneys, Attorney General Peggy A. Lautenschlager and Assistant Attorney General Christopher J. Blythe, answer the plaintiffs' first amended complaint as follows:

1. Defendants deny that any of the statutes referenced in paragraph 1 violate article I, § 1 of the Wisconsin Constitution. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1.

2. Defendants deny the allegations of paragraph 2 to the extent that they contain legal conclusions regarding plaintiffs' equal access to state-provided employee benefits. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. Defendants admit the allegations of paragraph 4.

5. Defendants admit the allegations of paragraph 5.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Defendants admit the allegations of paragraph 8 that as of April 20, 2005, the date this action was filed, both Jody Helgeland and Jessie Tanner were age 29.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Defendants admit the allegation of paragraph 12 that Jody Helgeland has been employed by the University of Wisconsin since 1998, and that she is eligible for group health insurance under the plan for state employees administered by the Group Insurance Board and the Department of Employee Trust Funds. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12.

13. Defendants admit that unless Jessie Tanner meets the definition of "dependent" in Wis. Admin. Code § ETF 10.01(2)(b), she cannot be covered under Jody Helgeland's group health insurance even if Jody is eligible for, and switches to, family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.

23. Defendants admit the allegations of paragraph 23.

24. Defendants admit the allegations of paragraph 24.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25, except that defendants deny that Jody Helgeland has designated Jessie Tanner as her beneficiary, as provided under Wis. Stat. § 40.02(8)(a)1., with respect to Ms. Helgeland's Wisconsin Retirement System account.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. Admit that as of April 20, 2005, the date this action was filed, Virginia Wolf was age 66 and Carol Schumacher was age 51.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, except defendants admit that the University of

Wisconsin-Stout, reported to the Department of Employee Trust Funds that Virginia Wolf was hired by the English Department there in 1977.

31. Defendants admit that the University of Wisconsin System reported that Virginia Wolf's employment ended in 2001, and that since February 13, 2001, she has been receiving a pension annuity from the Wisconsin Retirement System and that she is, in that sense, a "retired" UW employee. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 31.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32, except that defendants admit that the City of Eau Claire reported Carol Schumacher as a Wisconsin Retirement System participating employee, working full-time, as of November 26, 1979. For the years 1995 through 2004, the City reported less than full-time hours of service for Carol Schumacher.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. Defendants admit the allegation of paragraph 36 that as an insured state employee retiring on an "immediate annuity," as defined by Wis. Stat. § 40.02(38), Virginia Wolf was eligible under Wis. Stat. § 40.02(25)(b)4. for continued group health coverage under the program administered by the Department of Employee Trust Funds and Group Insurance Board.

Defendants admit that an accumulated sick leave conversion credit account was established by

the Department of Employee Trust Funds for Virginia Wolf, as provided by Wis. Stat. § 40.05(4)(b) and that the credits are available to pay her state employee group health insurance premiums while Ms. Wolfe maintains that coverage, until the credits are exhausted.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. Defendants admit that accumulated sick leave conversion credits may be applied only to pay for employer-provided group health insurance, and that only an employee's surviving insured dependents, as that term is defined by Wis. Stat. § 40.02(20), may utilize remaining accumulated sick leave conversion credits after the death of the employee in the manner provided by Wis. Stat. §§ 40.05(4)(b), (bc), (be), (bf), or 40.95(1)(a). Virginia Wolf has elected single coverage and therefore has no insured dependents. Defendants admit that, in the manner provided by Wis. Stat. §§ 40.05(4)(b), (bc), (be), (bf), or 40.95 (1)(a)., insured spouses of deceased insured state employees are able to use remaining unused sick leave conversion credits to pay health insurance premiums for their continued coverage under the state employee group health insurance program. Defendants admit that an uninsured or non-marital partner of an employee is not afforded the same opportunity.

39. Defendants admit the allegation of paragraph 39 that if Virginia Wolf died before exhausting her accumulated sick leave conversion credits, and there were no surviving insured dependents, the value (to Virginia Wolf) of the remaining credits would be lost. Any remaining allegations of paragraph 39 are denied.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

43. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.

44. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.

47. Defendants admit that Carol Schumacher and Virginia Wolf have each named the other as their primary beneficiary on the most recent written beneficiary designations, form ET-2320, filed with and accepted by the Department of Employee Trust Funds and applicable to any Wisconsin Retirement System benefits payable as the result of either individual, as well as to the separate coverage of each plaintiff under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.

50. Defendants admit the allegations of paragraph 50 that on April 20, 2005, when this action was filed, Diane Schermann was age 43 and Michelle Collins was age 34.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.

57. Defendants admit that the Wisconsin Department of Transportation reported Diane Schermann to the Wisconsin Retirement System as a participating employee in 2000. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 57.

58. To the extent that plaintiffs' reference to "the Wisconsin state insurance system" means an HMO contracted with the Group Insurance Board as part of the group health plan under ch. 40 of the statutes as administered by the Group Insurance Board and the Department of

Employee Trust Funds, defendants admit the allegations of paragraph 58. Defendants are without knowledge or information sufficient to form a belief as to the truth of any other allegations intended by paragraph 58.

59. Defendants deny the allegation of paragraph 59 that Michelle Collins is specifically and personally excluded from all Wisconsin state insurance contracts and plans. Defendants admit that because Michelle Collins is not a "dependent" of Diane Schermann, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), she is not covered under Diane Schermann's group health insurance family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 59.

60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64.

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68.

69. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69.

70. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70.

71. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71.

72. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73.

74. Defendants admit the allegation of paragraph 74 that Diane Schermann's most recent beneficiary designation, form ET-2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her coverage under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Michelle Marie Collins as her beneficiary. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 74.

75. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75.

76. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76.

77. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77, except that defendants admit that when this action was filed on April 20, 2005, Megan Sapnar was 30 years old.

78. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78.

79. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79.

80. Defendants admit the allegations of paragraph 80 as regards the University of Wisconsin. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 as regards the City of Madison.

81. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81.

82. Defendants admit that the University of Wisconsin reported Megan Sapnar to the Department of Employee Trust Funds as a graduate assistant, beginning in August 2003, for health insurance purposes. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 82.

83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83.

84. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84.

85. Defendants admit that Megan Sapnar is an “eligible employee” within the meaning of Wis. Stat. § 40.02(25)(b)2., and is therefore eligible for group health insurance under the program authorized by Wis. Stat. § 40.52(3). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 85.

86. Defendants admit the allegations of paragraph 86 that insofar as Megan Sapnar elected single coverage under the graduate assistants health insurance plan and Ingrid Ankerson is not a “dependent” within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), Ingrid is not covered under Megan’s group health insurance and would not be covered even if Megan was permitted to elect family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 86.

87. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87.

88. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 88.

89. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89.

90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90.

91. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91.

92. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92.

93. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93.

94. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94.

95. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 95.

96. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 96.

97. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97.

98. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 98.

99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 99.

100. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 101, except that defendants admit that Eloise McPike was born in 1953.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 102.

103. Defendants admit the allegation of paragraph 103 that Eloise McPike's most recent beneficiary designation, form ET-2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her group life insurance under the program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Janice Barnett as her primary beneficiary. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 103.

104. Defendants admit that the Department of Health and Social Services, Division of Corrections, reported Eloise McPike's employment as beginning October 22, 1984. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 104.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 105.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 106.

107. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 107.

108. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 108.

109. Defendants admit the allegation of paragraph 109 that under Wis. Stat. § 103.10(3)(b)3. an employee is permitted to take family leave to care for the employee's child, spouse or parent, as those terms are defined by Wis. Stat. § 103.10(1)(a), (h) and (f), respectively, if the child, spouse or parent has a serious health condition, as defined by Wis. Stat.

§ 103.10(1)(g). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 109.

110. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 110.

111. Defendants admit the allegations of paragraph 111 that because Janice Barnett is not a “dependent” of Eloise McPike, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), she cannot be covered under Eloise’s group health insurance, even if Eloise was permitted to switch to family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 111.

112. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 112.

113. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 113.

114. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 114.

115. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 115.

116. Defendants admit the allegations of paragraph 116.

117. Defendants admit the allegations of paragraph 117.

118. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 118.

119. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119.

120. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 120.

121. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 121.

122. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 122.

123. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 123.

124. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 124.

125. Defendants admit that Jayne Dunnum's most recent beneficiary designation, form ET-2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her coverage under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Robin R. Timm as her beneficiary. Defendants admit that Robin Timm's most recent beneficiary designation, form ET-2320, filed with and accepted by the Department of Employee Trust Funds and applicable to Wisconsin Retirement System death benefits, designates Jayne A. Dunnum as her beneficiary. Admit that Robin Timm has designated Jayne Dunnum as her primary beneficiary with respect to her deferred compensation account under Wis. Stat. § 40.80, et seq. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 125.

126. Defendants admit the allegations of paragraph 126.

127. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 127.

128. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 128.

129. Defendants admit that because Robin Timm is not a “dependent” of Jayne Dunnum, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), Robin cannot be covered under Jayne’s group health insurance, even if Jayne was permitted to switch to family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 129.

130. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 130.

131. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 131.

132. Defendants admit the allegations of paragraph 132 to the extent that they allege that health insurance plans offered to state employees include prescription drug coverage with a required co-payment. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 132.

133. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 133.

134. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 134.

135. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 135.

136. Defendants admit the allegations of paragraph 136.
137. Defendants admit the allegations of paragraph 137.
138. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 138.
139. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 139.
140. Defendants admit the allegations of paragraph 140.
141. Defendants admit the allegations of paragraph 141.
142. Defendants admit the allegations of paragraph 142, except to deny any implication that Wis. Stat. § 40.03(2) is the sole statutory source of the powers and duties of the Secretary of the Department of Employee Trust Funds and to deny any implication that Wis. Stat. § 15.05 is the sole statutory authority for the appointment of the Secretary of the Department of Employee Trust Funds.
143. Defendants admit the allegations of paragraph 143.
144. Defendants admit the allegations of paragraph 144.
145. In response to the allegations of paragraph 145, defendants admit that plaintiffs have correctly quoted a portion of the cited statute.
146. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants admit the remaining allegations of paragraph 146.
147. Defendants admit that in paragraph 147 plaintiffs have correctly quoted a portion of the cited statute.
148. Defendants deny any implied allegation in paragraph 148 that state employees in opposite-sex relationships may elect to pay additional insurance premiums to extend the

coverage of insurance coverage to any person other than a lawful spouse or a dependent as defined by Wis. Admin. Code § ETF 10.01(2).

149. Defendants admit that the allegations of paragraph 149 generally describe, without specifics, the accumulated sick leave conversion credit benefit of Wis. Stat. § 40.05(4)(b).

150. Defendants deny the allegations of paragraph 150 that the definition of “dependent” in Wis. Stat. § 40.02(20) applies to determine which dependents may be covered under family coverage of any group health insurance program of the Group Insurance Board. Defendants admit that the definition of “dependent” in Wis. Stat. § 40.02(20) forms part of the criteria for determining whether surviving insured dependents may have rights or interests to any remaining, unused accumulated sick leave conversion credits of a deceased employee or former employee.

151. Defendants deny any implication in paragraph 151 that the accumulated sick leave conversion credits of any deceased state employee in an opposite-sex relationship may be utilized by any persons other than the deceased employee’s insured dependant, as defined by Wis. Stat. § 40.02(20). Defendants deny any implication that they have misinterpreted the state statutes applicable to determining dependent eligibility for sick leave conversion credits and deny any implication that they have administered accumulated sick leave conversion credit benefits for insured dependents of deceased state employees contrary to the applicable statutes. Defendants admit that state employees in committed same-sex relationships may not share their accumulated unused sick leave with their same-sex partners.

152. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants deny the allegations of paragraph 152 to the extent that they contain legal conclusions.

153. Defendants deny the allegations of paragraph 153 to the extent that they contain legal conclusions, and affirmatively allege that Wis. Stat. § 103.10(2)(a) speaks for itself.

154. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 154. Defendants deny the allegations of paragraph 154 to the extent that they constitute legal conclusions.

155. Defendants deny the allegations of paragraph 155 to the extent that the allegations constitute legal conclusions. Defendants admit that family health insurance, sick leave carryover and family leave benefits are provided to state employees under terms and conditions provided by statute.

156. In response to the allegations of paragraph 156, defendants admit that state employees in same-sex relationships are not able to obtain health insurance for their non-spousal partners, that their non-spousal partners cannot benefit from sick leave carryover and that the employees cannot take family leave to care for their non-spousal, same-sex domestic partners. Defendants deny that these results are in any way attributable to any misinterpretation of the applicable state statutes by defendants or any administration of the benefit program by the defendants that is contrary to the applicable statutes.

157. Defendants admit the allegations of paragraph 157.

158. Defendants admit the allegations of paragraph 158.

159. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 159.

160. Defendants deny the allegations of paragraph 160.

161. Defendants admit that the definitions of “dependent” in Wis. Stat. § 40.02(20) and Wis. Admin. Code § ETF 10.01(2)(a) and (b) for purposes of accumulated sick leave conversion credits, group life insurance and group health insurance apply to spouses and specified children. Defendants deny that there is a statutory definition of “dependent” with respect to family leave, although the definition of “spouse” in Wis. Stat. § 103.10(1)(h) is limited to an employee’s legal husband or wife. The remaining allegations of paragraph 161 are denied.

162. Defendants admit the allegations of paragraph 162 that no employees, regardless of sexual orientation, may obtain “dependent” coverage for persons not meeting the applicable definitions of “dependent” under the laws of this State. Defendants deny that the State of Wisconsin denies lesbians and gay men the right to marry, although defendants admit that the State of Wisconsin denies lesbians and gay men the right to marry a same-sex partner. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants deny any remaining allegations of paragraph 162.

163. Defendants deny the allegations of paragraph 163.

164. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 164.

165. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 165.

166. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 166.

167. As and for an answer to paragraph 167, defendants incorporate herein by reference their responses to paragraphs 1 to 166.

168. Defendants admit the allegations of paragraph 168.

169. Defendants admit the allegations of paragraph 169 that a state employee and his or her same-sex life partner who are in a committed, intimate relationship are not treated as spouses for purposes of group health insurance, accumulated sick leave conversion credits and family leave benefits. Defendants admit that this is the result of the laws governing the applicable employee benefits. Defendants deny that they have misinterpreted this aspect of the laws governing the benefits plans under their administration. Defendants deny any remaining allegations to the extent that they constitute a legal conclusion.

170. Defendants deny the allegations of paragraph 170 to the extent that they constitute a legal conclusion, and deny the allegations based on the court's reasoning in *Phillips v. Wisconsin Personnel Commission*, 167 Wis. 2d 205, 482 N.W.2d 121 (Ct. App. 1992).

171. Defendants admit the allegations of paragraph 171 to the extent that there is a difference between the extension of dependent benefits to unmarried employees with same-sex partners and employees with lawful spouses of the opposite-sex. Defendants deny any remaining allegations of paragraph 171.

172. Defendants deny the allegations of paragraph 172, in that they are erroneous legal arguments to which no response is required here and about which relevant law is the best authority. In addition, any remaining allegations in plaintiffs' first amended complaint to which defendants have not specifically responded are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred by the doctrine of sovereign immunity.

3. Plaintiffs have failed to exhaust their administrative remedies.

WHEREFORE, defendants request that the Court dismiss plaintiffs' action and deny all requests for relief.

Dated this 5th day of July 2005.

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